

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Willie Deon McIntosh

Case No. 05-81496- -

Chapter 13

Social Security No.:

xxx-xx-0318

Address:

HHC 2Nd Bde, Fort Bragg, Nc 28310,

Fort Bragg, NC 28310-

Debtor(s)

MOTION FOR HARDSHIP DISCHARGE

The Debtor, by attorney undersigned, pursuant to 11 USC Section 1328(b), moves the Court for a hardship discharge in this case, and in support thereof, shows the court as follows :

1. This case was filed on May 18, 2005. The Chapter 13 plan in this case was confirmed on August 12, 2005.
2. The Debtor's confirmed plan provided for a 25% dividend to general unsecured creditors and further required a periodic review of the plan for payment adjustments.
3. As of July 27, 2011, the Debtor's plan has paid approximately \$9,821.99 to unsecured creditors, representing a 22.9% dividend to unsecured creditors.
4. On May 4, 2011, the standing Chapter 13 Trustee filed a Motion to Dismiss the Debtor's case because the plan exceeds to 60 month time limitation imposed by 11 U.S.C. § 1322(d).
5. Counsel for the debtor has attempted to contact the Debtor, but has been unsuccessful.
6. Per the Department of Defense Manpower Data Center, the Debtor is currently on active duty with the United States Army. A copy of the Department of Defense query is attached as Exhibit "A"
7. The debtor meets all of the conditions required by Section 1328(b).
8. The value, as of the effective date of the plan, of funds or other property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under Chapter 7 of the Bankruptcy Code on such date.
9. Modification of the plan under Section 1329 is not practicable because the debtor's plan has exceeded the 60 month limitation imposed by 11 U.S.C. § 1322(d).

10. The failure of the debtor to complete the payments under the plan is due to the following circumstances for this the debtor should not justly be held accountable:
 - a. The Debtor is on active duty with the United States Army and is not able to provide counsel with information which would support modification or conversion of his case.

WHEREFORE, the debtor prays that this motion be granted and that the debtor be granted a hardship discharge and such other and further relief as to the Court seems just and proper.

Dated: July 27, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s/ Koury L. Hicks
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